

**GENERAL PROVISIONS FOR**  
**~~TEXAS DEPARTMENT OF HEALTH~~DEPARTMENT OF STATE HEALTH SERVICES**  
**SUBRECIPIENT GRANT CONTRACTS**

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Paper Publications Number: 29-11833, Revised ~~November 2003~~June 2004



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SUBRECIPIENT GRANT CONTRACTS**

**ARTICLE 1. Preamble**

PERFORMING AGENCY and RECEIVING AGENCY (the parties) agree to make and enter into this grant contract (contract), to faithfully perform the duties prescribed by this contract, and to uphold and abide by its terms and provisions. This contract consists of:

- RECEIVING and PERFORMING AGENCY identifying data,
- Details of Attachment(s),
- authorized signatures,
- General Provisions, and
- Attachment(s).

Attachments may include the following elements as applicable:

- detailed Scope(s) of Work,
- Special Provisions,
- budget(s), and
- exhibit(s).

This contract represents the complete and entire understanding and agreement of the parties. No prior agreement or understanding, oral or otherwise, of the parties or their agents will be valid or enforceable unless embodied in this contract. The terms “shall” and “will” are used interchangeably in this contract.

The person or persons signing and executing this contract on behalf of PERFORMING AGENCY, or representing themselves as signing and executing this contract on behalf of PERFORMING AGENCY, warrant and guarantee that he, she, or they have been duly authorized by PERFORMING AGENCY to execute this contract for PERFORMING AGENCY and to validly and legally bind PERFORMING AGENCY to all of its terms, performances, and provisions.

PERFORMING AGENCY assures compliance with this contract, including these General Provisions, unless otherwise specified in any Special Provisions of the Attachment(s) to this document. If the General Provisions are revised or replaced during the term of this contract and PERFORMING AGENCY does not consent to comply with the modified General Provisions, PERFORMING AGENCY may exercise its termination options in accordance with the General Provisions, Termination Article.

**ARTICLE 2. Term**

The term (time period) of this contract shall be governed by the term(s) of the Attachment(s). No commitment of contract funds is permitted prior to the first day or subsequent to the last day of the term. The term may be renewed, extended or shortened by amendment(s).

### **ARTICLE 3. Funding**

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the appropriations act, health and human services agency consolidations, or any other disruption of current appropriations, provisions of the Termination Article shall apply.

### **ARTICLE 4. Amendments**

Amendments to this contract must be in writing and signed by individuals with authority to bind the parties.

Uniform Grants Management Standards and RECEIVING AGENCY procedures authorize limited changes to a contract attachment with prior written approval from RECEIVING AGENCY. PERFORMING AGENCY must submit request in format prescribed by RECEIVING AGENCY Program. RECEIVING AGENCY will consider the request and document approval or disapproval in writing. PERFORMING AGENCY is responsible for ensuring that any modification to a contract Attachment becomes a part of the contract file.

RECEIVING AGENCY may not waive any term, covenant, or condition of this contract unless by amendment executed in compliance with this Article. PERFORMING AGENCY shall not perform and RECEIVING AGENCY will not pay for the performance of different or additional services, work, or products except pursuant to an amendment that is executed in compliance with this Article.

PERFORMING AGENCY shall plan expenditures so that any necessary budget revisions or amendments are executed no later than ninety (90) days prior to the expiration of the Attachment term. PERFORMING AGENCY shall provide a written justification for any budget revisions and/or amendments. If a budget revision or amendment is requested during the last quarter of the Attachment term, the written justification shall include a reason for the delay. Revision or amendment requests may be granted at the discretion of RECEIVING AGENCY.

### **ARTICLE 5. Applicable Laws and Standards**

This contract shall be interpreted under and in accordance with the laws of the State of Texas and enabling state rules. Where applicable, federal statutes and regulations, including federal grant requirements applicable to funding sources, shall apply to this contract. PERFORMING AGENCY agrees to comply with the Uniform Grant Management Act (UGMA), Texas Government Code, Chapter 783, as amended, and the Uniform Grant Management Standards (UGMS) as amended by revised federal circulars and incorporated in UGMS by the Governor's Budget and Planning Office. UGMA is located on the Internet at <http://www.capitol.state.tx.us/statutes/statutes.html>; the UGMS are located on the Internet at <http://www.governor.state.tx.us/stategrants/>.

PERFORMING AGENCY shall not use funds granted under this contract to pay any person for influencing or attempting to influence an officer or employee of any agency, federal or state, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any contract or grant or the extension, continuation, renewal, amendment, or modification of any contract or grant (31 USC § 1352, as amended, and UGMS). If at any time this contract exceeds \$100,000 of federal funds, PERFORMING AGENCY shall file with RECEIVING AGENCY a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of PERFORMING AGENCY in connection with that contract or grant, a certification that none of the funds provided by RECEIVING AGENCY have been or will be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom PERFORMING AGENCY has an agreement. PERFORMING AGENCY shall require any person who requests or receives a subgrant or subcontract to file the same declaration, certification, and disclosure with RECEIVING AGENCY. PERFORMING AGENCY shall file the declaration, certification, and disclosure at the time of application for the contract or grant; upon execution of a contract or grant unless PERFORMING AGENCY

previously filed a declaration, certification, or disclosure form in connection with the award; and at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed. RECEIVING AGENCY will supply the certification form to PERFORMING AGENCY upon request.

#### **ARTICLE 6. Debarment and Suspension**

PERFORMING AGENCY certifies by execution of this contract to the following:

- It is not ineligible for participation in federal or state assistance programs under Executive Order 12549, Debarment and Suspension, Feb. 18, 1986, 51 Fed. Reg. 6370;
- Neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;
- It has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency; and,
- It is not subject to an outstanding judgment in a suit against PERFORMING AGENCY for collection of the balance of a debt.

Where PERFORMING AGENCY is unable to certify to any of the statements in this Article, PERFORMING AGENCY shall attach an explanation. If PERFORMING AGENCY'S status with respect to the items certified above changes during the contract, PERFORMING AGENCY shall notify RECEIVING AGENCY; immediately.

PERFORMING AGENCY shall not contract with a subrecipient nor procure goods or services from a subcontractor, at any tier, which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549.

#### **ARTICLE 7. Assurances**

PERFORMING AGENCY shall establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

To the extent; such provisions are applicable to PERFORMING AGENCY; PERFORMING AGENCY agrees to fully comply with the following:

- Title VI of the Civil Rights Act of 1964, 42 USC §§2000d *et seq.*, as amended (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin, and includes the provision for effective communication and equal access to programs, services, and activities to persons with Limited English Proficiency (LEP);
- Title IX of the Education Amendments of 1972, 20 USC §§1681-1683, and 1685-1686, as amended, which prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, 29 USC §794(a), which prohibits discrimination on the basis of disabilities and the Americans with Disabilities Act of 1990, 42 USC §§12101 *et seq.*, including the provision for effective communication and equal access to programs, services and activities to persons with sensory and speech impairments;
- The Age Discrimination Act of 1975, 42 USC §§6101-6107, as amended, which prohibits discrimination on the basis of age;
- The Drug Abuse Office and Treatment Act of 1972, 21 USC §§1101 *et seq.*, as amended, relating to nondiscrimination on the basis of drug abuse;
- The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, 42 USC §290dd (b)(1), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism;

- Public Health Service Act of 1912, §§523 and 527, 42 USC §290dd-2, as amended, relating to confidentiality of alcohol and drug abuse patient records;
  - Title VIII of the Civil Rights Act of 1968, 42 USC §§3601 *et seq.*, as amended, relating to nondiscrimination in the sale, rental or financing of housing;
  - The requirements of any other nondiscrimination statute(s); and,
- ~~□RECEIVING AGENCY Policy XO-0119, Non-Discrimination Policies and Procedures for TDH Programs, relating to nondiscrimination in the delivery of contracted services on the basis of race, color, national origin, religion, age, sex, sexual orientation or disability. The policy is located on the Internet at <http://www.tdh.state.tx.us/oto/xo-0119.htm>.~~

Collectively, such requirements obligate RECEIVING AGENCY to provide services without discrimination on the basis of race, color, national origin, religion, age, sex, ~~sexual orientation~~ or disability. PERFORMING AGENCY shall carry out the terms of this contract in a manner which will assist RECEIVING AGENCY in complying with such obligations to the fullest extent of PERFORMING AGENCY'S ability.

PERFORMING AGENCY agrees to comply with all or part of the following, as applicable:

- A. Texas Labor Code, Chapter 21, which requires that certain employers not discriminate on the basis of race, color, disability, religion, sex, national origin, or age.
- B. Immigration Reform and Control Act of 1986, 8 USC §1324a, as amended, regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, who will perform any labor or services under this contract.
- C. Pro-Children Act of 1994, 20 USC §§6081-6084, regarding the provision of a smoke-free workplace and promoting the non-use of all tobacco products.
- D. The National Research Service Award Act of 1971, 42 USC §§289a-1 *et seq.*, as amended, and 6601 (P.L. 93-348 and P.L. 103-43), as amended, regarding the protection of human subjects involved in research, development, and related activities supported by any applicable award of federal assistance, as implemented by 45 CFR Part 46, Protection of Human Subjects.
- E. The Clinical Laboratory Improvement Amendments of 1988, 42 USC §263a, as amended, which establish federal requirements for the regulation and certification of clinical laboratories.
- F. The Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR §1910.1030, which set safety standards for those workers and facilities in the private sector who may handle blood borne pathogens, or Title 25 Texas Administrative Code (TAC), Chapter 96, which affects facilities in the public sector.
- G. Laboratory Animal Welfare Act of 1966, 7 USC §§2131 *et seq.* (P.L. 89-544), as amended, pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by this award of assistance.
- H. Texas Government Code, Chapter 469, as amended, pertaining to standards which eliminate architectural barriers for persons with disabilities.
- I. Health and Safety Code, Chapter 165, relating to the rights of mothers to breast-feed and the promotion of breast-feeding. RECEIVING AGENCY will support PERFORMING AGENCY in complying by providing promotional material and information that encourages breast-feeding to program participants who are pregnant women or mothers with infants. Promotional material may be requested from RECEIVING AGENCY by calling (512) 458-7796.

J. Environmental standards pursuant to the following:

- 1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, 42 USC §§4321-4347 and Executive Order 11514 (35 Fed. Reg. 4247), “Protection and Enhancement of Environmental Quality.”
- 2) Notification of violating facilities pursuant to Executive Order 11738 (40 CFR Part 32), “Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans.”
- 3) Protection of wetlands pursuant to Executive Order 11990, 42 Fed. Reg 26961.
- 4) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 Fed. Reg. 26951.
- 5) Assurance of project consistency with the approved State Management program developed under the Coastal Zone Management Act of 1972, 16 USC §§1451 *et seq.*, as amended.
- 6) Conformity of federal actions to state clean air implementation plans under the Clean Air Act of 1955, as amended, 42 USC §§7401 *et seq.*
- 7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, 42 USC §§300f-300j, as amended.
- 8) Protection of endangered species under the Endangered Species Act of 1973, 16 USC §§1531 *et seq.*, as amended.

K. The Hatch Political Activity Act, 5 USC §§7321-26, which limits the political activity of employees whose principal employment activities are funded in whole or in part with federal funds.

L. The Fair Labor Standards Act, 29 USC §§201 *et seq.*, and the Intergovernmental Personnel Act of 1970, 42 USC §§4701 *et seq.*, as applicable, concerning minimum wage and maximum hours.

PERFORMING AGENCY shall ensure that the facilities under its ownership, lease, or supervision which will be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency’s (EPA) list of Violating Facilities and shall notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA (Executive Order 11738).

PERFORMING AGENCY shall comply with the flood insurance purchase requirements of 102(a) of the Flood Disaster Protection Act of 1973, 42 USC §§4001-4003, as amended. Section 102(a) requires the purchase of flood insurance in communities where the insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition proposed for use in any area that has been identified by the Secretary of the U.S. Department of Housing and Urban Development as an area having special flood hazards.

As required by Texas Family Code, §231.006, a child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) is not eligible to receive payments from state funds under a contract to provide property, materials, or services or receive a state-funded grant or loan. If applicable, PERFORMING AGENCY agrees to comply with these provisions, certifies that it is not ineligible to receive the payments specified in this contract, and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

~~PERFORMING AGENCY, if a corporation, certifies by execution of this contract that it is current and will remain current in its payment of franchise taxes to the State of Texas or that it is exempt from payment of franchise taxes under Texas law (Texas Tax Code §§171.001 *et seq.*, as amended). A false statement regarding franchise tax status is a material breach of this contract. If franchise tax payments become delinquent during the Attachment term, all or~~



~~part of the payments under this contract may be withheld until PERFORMING AGENCY'S delinquent franchise tax is paid in full.~~

~~Pursuant to Government Code § 403.055, Receiving Agency will not approve and the State Comptroller will not issue payment to Performing Agency if Performing Agency is indebted to the state for any reason, including a tax delinquency.~~

If PERFORMING AGENCY provides medical, dental, psychological or surgical treatment to a minor under this contract, either directly or through contracts with subrecipients, the treatment of a minor shall be provided only if consent to treatment is obtained pursuant to Chapter 32 of the Texas Family Code relating to consent to treatment of a child by a non-parent or child. If requirements of federal law relating to consent directly conflict with Chapter 32 of the Family Code, federal law shall supersede state law.

If PERFORMING AGENCY provides immunizations, PERFORMING AGENCY shall comply with all immunization reporting guidelines and requirements set forth in the Health and Safety Code, Chapter 161, Subchapter A. This requirement shall also apply to subrecipients or subcontractors of PERFORMING AGENCY, if any.

PERFORMING AGENCY shall comply with the requirements of the Texas Workers' Compensation Act, Labor Code, Chapters 401-406, and rules promulgated thereunder found at 28 Texas Administrative Code (TAC), Part 2, which covers compensation for employees' injuries.

When incorporated into an Attachment, standard assurances contained in the application package, if any, become terms or conditions for receipt of RECEIVING AGENCY funds. PERFORMING AGENCY and its subrecipients shall maintain an appropriate contract administration system to insure that all terms, conditions, and specifications are met.

PERFORMING AGENCY shall comply with all federal tax laws and is solely responsible for filing all required state and federal tax forms.

PERFORMING AGENCY assures it shall not transfer, assign or sell its interest in this contract, or in any equipment purchased with funds from this contract, without the written consent of RECEIVING AGENCY.

#### **ARTICLE 8. Child Abuse Reporting Requirements**

*[PERFORMING AGENCY is required to comply with this article only as related to services provided under the following Attachments: Human Immunodeficiency Virus and Sexually Transmitted Diseases (all direct client care services for HIV and other sexually transmitted diseases funded under the Ryan White CARE Act Title II or general revenue), Title V Family Planning (ACFH/FEE-FP, Title X Family Planning (BWH/TITLE X), Title XX Family Planning (BWH/TTLXX), Primary Health Care (ACFH/PHC), Title V Maternal and Child Health (ACFH/FEE), Special Supplemental Nutrition Program for Women, Infants, and Children (BNS/WIC-CARD, and the Services Delivery Integration project (SDI/FFS).]* PERFORMING AGENCY and each of its subrecipients shall make a good faith effort to comply with child abuse reporting guidelines and requirements in Chapter 261 of the Texas Family Code relating to investigations of reports of child abuse and neglect. PERFORMING AGENCY and each of its subrecipients shall develop, implement and enforce a written policy that includes at a minimum the TDH Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Providers and train all staff on reporting requirements. PERFORMING AGENCY and its subrecipients shall use the Checklist for TDH Monitoring as required by RECEIVING AGENCY. (The policy and checklist are available at each of the above-referenced programs' websites.)

#### **ARTICLE 9. Intellectual Property**

Texas Health and Safety Code §12.020, as amended, authorizes RECEIVING AGENCY to protect intellectual



property developed as a result, of this contract.

“Intellectual property” means created property that may be protected under copyright, patent, or trademark/service mark law.

“Work made for hire” is a copyrightable work prepared for RECEIVING AGENCY use, or a work specially ordered or commissioned through a contract for RECEIVING AGENCY use. RECEIVING AGENCY owns works made for hire unless it agrees otherwise by contract.

If federal or state funds are used to finance activities supported by this Contract that result in the production of original material, the federal or state awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal or state government purposes (1) the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright to which a PERFORMING AGENCY or its subrecipient purchases ownership with grant support. PERFORMING AGENCY shall place an acknowledgment of federal or state awarding agency grant support and a disclaimer, as appropriate, on any publication written or published with such support and, if feasible, on any publication reporting the results of or describing a grant-supported activity. An acknowledgment shall be to the effect that “This publication was made possible by grant number \_\_\_\_\_ from (federal or state awarding agency)” or “The project described was supported by grant number \_\_\_\_\_ from (federal or state awarding agency)” and “Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the (federal or state awarding agency).”

In the event the terms of a federal or state grant award the copyright to PERFORMING AGENCY, RECEIVING AGENCY reserves a royalty-free, nonexclusive, worldwide and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for RECEIVING AGENCY, public health, and state governmental noncommercial purposes (1) the copyright, trademark, service mark, and/or patent on an invention, discovery, or improvement to any process, machine, manufacture, or composition of matter; products; technology; scientific information; trade secrets; and computer software, in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright, service or trade marks or patents to which a grantee, subgrantee or a PERFORMING AGENCY purchases ownership with grant support.

If the results of the contract performance are subject to copyright law, the PERFORMING AGENCY cannot publish those results without prior review and approval of RECEIVING AGENCY.

#### **ARTICLE 10. Historically Underutilized Businesses**

If PERFORMING AGENCY subcontracts a portion of this contract, PERFORMING AGENCY agrees to make a good faith effort to subcontract with HUBs during the performance of its Attachment(s) with RECEIVING AGENCY and will report HUB subcontract activity on a quarterly basis to RECEIVING AGENCY.

#### **ARTICLE 11. Conflict of Interest**

PERFORMING AGENCY does not have nor will it acquire any interest that would conflict in any manner with the performance of its obligations under this contract. Potential conflicts of interest include an existing business or personal relationship between PERFORMING AGENCY, its principal, or any affiliate or subrecipient with RECEIVING AGENCY, its board members, officers or employees, or any other entity or person involved in any way in any project that is the subject of this contract.

#### **ARTICLE 12. Certification of Software, Hardware, Firmware and Micro Code Products**

PERFORMING AGENCY certifies that any supplied or supported software, hardware, firmware, and micro code products used individually or together as a system to comply with RECEIVING AGENCY contract requirements will operate “accurately” in the manner in which they were intended when given a “valid date” containing century, year, month, and day.

For purposes of this Article, “supplied or supported software, hardware, firmware, and micro code products” does not include software supported by RECEIVING AGENCY or an agency of the federal government.

PERFORMING AGENCY is responsible for installing and implementing any versions of any software provided by RECEIVING AGENCY or an agency of the federal government which is used in performance of this contract.

For purposes of this Article,

- A. “accurately” is defined to include the following:
  - 1) calculations shall be correctly performed using four-digit year processing;
  - 2) functionality-on-line, batch including entry, inquiry, maintenance and updates shall support four-digit year processing;
  - 3) interfaces and reports shall support four-digit year processing;
  - 4) processing with a four-digit year shall occur without human intervention;
  - 5) correct results in forward and backward date calculation spanning century boundaries shall be provided;
  - 6) correct leap year calculations shall be performed; and,
  - 7) processing correct results in forward and backward date calculation spanning century boundaries shall occur;
- B. “date integrity” shall mean all manipulations of time-related data (dates, durations, days of week, etc.) shall produce desired results for all valid date values within the application domain;
- C. “explicit century” shall mean date elements in interfaces and data storage permit specifying century to eliminate date ambiguity;
- D. “extraordinary actions” shall be defined to mean any action outside the normal documented processing steps identified in the product’s reference documentation;
- E. “general integrity” shall mean no value for current date will cause interruptions in desired operation;
- F. “implicit century” shall mean for any data element without century, the correct century is unambiguous for all manipulations involving that document;
- G. “product” or “products” shall be defined to include, but is not limited to, any supplied or supported hardware, software, firmware and/or micro code; and,
- H. “valid date” shall contain a two-digit month, a two-digit day and a four-digit year.

PERFORMING AGENCY and its subrecipient(s) shall obtain a warranty from any vendor/licensor (from which it obtains product(s)), that product(s) delivered and installed under the contract/license shall accurately process valid date data when used in accordance with the product documentation provided by the contractor/licensor and require no extraordinary actions on the part of PERFORMING AGENCY, its personnel, or its subrecipient(s). Products under the contract/license shall possess general integrity, date integrity, explicit and implicit century capabilities. If the contract/license requires that specific products shall perform as a system in accordance with the foregoing warranty, then the warranty shall apply to those listed products as a system. The duration of this warranty and the

remedies available to PERFORMING AGENCY or its subrecipient(s) for breach of the warranty shall be defined in, and subject to, the terms and conditions of the contractor's standard commercial warranty or warranties contained in the contract/license; provided, that notwithstanding any provision to the contrary in such commercial warranty or warranties, the remedies available to PERFORMING AGENCY or its subrecipient(s) shall include repair or replacement of any supplied product if its noncompliance is discovered and made known to the contractor/licensor in writing within ninety (90) days after final acceptance. Nothing in the warranty shall be considered to limit any rights or remedies PERFORMING AGENCY or its subrecipient(s) may otherwise have under the contract/license.

RECEIVING AGENCY will not hold PERFORMING AGENCY responsible if the information coming to PERFORMING AGENCY'S product/software from RECEIVING AGENCY is inaccurate or corrupt.

### **ARTICLE 13. Standards for Financial and Programmatic Management**

PERFORMING AGENCY shall develop, implement, and maintain financial management and control systems that meet or exceed the requirements of UGMS and adhere to procedures detailed in RECEIVING AGENCY'S Financial Administrative Procedures Manual (documents available at [http://www.tdh.state.tx.us/grants/form\\_doc.htm](http://www.tdh.state.tx.us/grants/form_doc.htm)). Those requirements shall include at a minimum:

- A. Financial planning, including the development of budgets that adequately reflect all functions and resources necessary to carry out authorized activities and the adequate determination of costs;
- B. Financial management systems including accurate, correct, and complete accounting records, that identify the source and application of funds provided under each Attachment, and that support the information contained in required financial reports; cost source documentation; effective internal and budgetary controls; determination of reasonableness, allowableness, and allocability of costs; and timely and appropriate audits and resolution of any findings; and,
- C. Billing and collection policies, including a fee schedule, a system for discounting or adjusting charges based on a person's income and family size, and a mechanism capable of billing and making reasonable efforts to collect from patients and third parties.

PERFORMING AGENCY shall bill all third party payers for services provided under the Attachment(s) before submitting any request for reimbursement to RECEIVING AGENCY. A third party payer is any person or entity who has the legal responsibility for paying all or part of the services provided, including commercial health or liability insurance carriers, Medicaid, or other federal, state, local, and private funding sources. Third party billing functions shall be provided by PERFORMING AGENCY at no cost to the client. PERFORMING AGENCY or its subrecipient shall become a Medicaid provider if performing approved Texas Medicaid services authorized by the Attachment(s).

PERFORMING AGENCY, if designated a 501(c)(3) organization as defined in the Internal Revenue Service Code or a for-profit organization, and its governing board, shall bear full responsibility for the integrity of the fiscal and programmatic management of the organization. Such responsibility shall include: accountability for all funds and materials received from RECEIVING AGENCY; compliance with RECEIVING AGENCY rules, policies, procedures, and applicable federal and state laws and regulations; and correction of fiscal and program deficiencies identified through self-evaluation and RECEIVING AGENCY'S monitoring processes. Further, PERFORMING AGENCY'S governing board shall ensure separation of powers, duties, and functions of board members and staff. Ignorance of any contract provisions or other requirements contained or referenced in this contract shall not constitute a defense or basis for waiving or appealing such provisions or requirements.

### **ARTICLE 14. Bonding and Liability Insurance**

PERFORMING AGENCY is required to carry a fidelity bond or insurance coverage equal to the amount of funding provided under the Attachment(s) up to \$100,000 that covers each employee of PERFORMING AGENCY handling funds under this contract, including person(s) authorizing payment of such funds. The fidelity bond or insurance shall provide for indemnification of losses occasioned by: 1) any fraudulent or dishonest act or acts committed by any of PERFORMING AGENCY'S employees, either individually or in concert with others, and/or 2) failure of PERFORMING AGENCY or any of its employees to perform faithfully his/her duties or to account properly for all monies and property received by virtue of his/her position or employment.

PERFORMING AGENCY shall also maintain liability insurance coverage, referred to in Texas Government Code, Section 2259.102, as "director and officer liability coverage," where PERFORMING AGENCY is a legal entity that is required to have directors and/or officers. This provision applies to entities that are organized as non-profit corporations under the Texas Non-Profit Corporation Act; for-profit corporations organized under the Texas Business Corporations Act; and any other legal entity that is required under Texas law to have directors and/or officers. PERFORMING AGENCY shall maintain liability insurance coverage in an amount not less than the total value of this contract and that is sufficient to protect the interests of RECEIVING AGENCY in the event an actionable act or omission by a director or officer of PERFORMING AGENCY damages RECEIVING AGENCY'S interests.

#### **ARTICLE 15. Funding Participation Requirement**

PERFORMING AGENCY agrees funds provided through this contract shall not be used for matching purposes in securing other funding unless directed or approved by RECEIVING AGENCY.

#### **ARTICLE 16. Allowable Costs and Audit Requirements**

Only those costs allowable under UGMS and any revisions thereto plus any applicable federal cost principles are eligible for reimbursement under this contract. Applicable cost principles, audit requirements, and administrative requirements are as follows:

<b>Applicable Cost Principles*</b>	<b>Audit Requirements*</b>	<b>Administrative Requirements*</b>
OMB Circular A-87, State, Local & Tribal Governments	OMB Circular A-133 and UGMS	UGMS
OMB Circular A-21, Educational Institutions	OMB Circular A-133 and UGMS	OMB Circular A-110
OMB Circular A-122, Non-Profit Organizations	OMB Circular A-133 and UGMS	UGMS
48 CFR Part 31, For-profit Organization other than a hospital and an organization named in OMB Circular A-122 as not subject to that circular	Program audit conducted by an independent certified public accountant in accordance with Governmental Auditing Standards.	

\* OMB Circulars will be applied with the modifications prescribed by UGMS.

PERFORMING AGENCY or the AUTHORIZED CONTRACTING ENTITY shall arrange for a financial and compliance audit (Single Audit) if required by OMB Circular A-133 and/or UGMS, Part IV, "State of Texas Single Audit Circular." The audit shall be of the PERFORMING AGENCY'S or the AUTHORIZED CONTRACTING

ENTITY'S fiscal year. The audit shall be conducted by an independent certified public accountant and in accordance with applicable OMB Circulars, Government Auditing Standards, and UGMS. PERFORMING AGENCY shall procure audit services in compliance with state procurement procedures, as well as with the provisions of UGMS.

If PERFORMING AGENCY is not required to have a Single Audit, a limited scope audit may be required. RECEIVING AGENCY will provide PERFORMING AGENCY with written audit requirements if a limited scope audit is required.

~~Within thirty (30) days of receipt of the audit reports required by this section, PERFORMING AGENCY/ AUTHORIZED CONTRACTING ENTITY shall submit a copy to RECEIVING AGENCY'S Internal Audit Division.~~

Within thirty (30) days of receipt of the audit reports required by this section, PERFORMING AGENCY/ AUTHORIZED CONTRACTING ENTITY shall submit a copy to Health and Human Services Commission (HHSC), OIG Single Audit at the following address:

Health and Human Services Commission

Attention: Single Audit OIG

Mailcode H-954

1100 West 47th Street

Austin, Texas 78756-3199

#### **ARTICLE 17. Terms and Conditions of Payment**

For services satisfactorily performed pursuant to this contract, RECEIVING AGENCY will reimburse PERFORMING AGENCY for allowable costs. Reimbursements are contingent on a signed contract and will not exceed the total of each Attachment(s). PERFORMING AGENCY is entitled to payment only if the service, work, and/or product has been authorized and satisfactorily performed. If those conditions are met, RECEIVING AGENCY will make payment in accordance with the Texas prompt payment law (Texas Government Code, Chapter 2251). PERFORMING AGENCY is entitled to exercise remedies for nonpayment in accordance with Texas Government Code, Chapter 2251, Subchapter D.

PERFORMING AGENCY shall have incurred a cost within the applicable Attachment term to be eligible for reimbursement under this contract and prior to claiming reimbursement. PERFORMING AGENCY shall submit requests for reimbursement on a State of Texas Purchase Voucher (TDH Form B-13) or any other form designated by RECEIVING AGENCY monthly within thirty (30) days following the end of the month covered by the bill. PERFORMING AGENCY shall submit a reimbursement request as a final close-out bill not later than ninety (90) days following the end of the applicable Attachment term(s) for goods received and services rendered during the Attachment term. Reimbursement requests received in RECEIVING AGENCY'S offices more than ninety (90) days following the end of the applicable Attachment term will not be paid. If necessary to meet this deadline, PERFORMING AGENCY may submit reimbursement request by facsimile transmission. Consideration of requests for an exception will be made on a case-by-case basis and only for an extenuating circumstance such as a catastrophic event, natural disaster, or criminal activity that substantially interferes with normal business operations, or causes damage or destruction of the place of business and/or records. A written statement describing the extenuating circumstance and the last request for reimbursement must be submitted for review and approval to the RECEIVING AGENCY Program sponsoring the Attachment.

PERFORMING AGENCY shall disburse program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting cash payments including advance payments from RECEIVING AGENCY.

Funding from this contract shall not be used to supplant [i.e., use in place of funds dedicated, appropriated or expended for activities funded through the Attachment(s)] state or local funds, but PERFORMING AGENCY shall



use the funds from this contract to increase state or local funds currently available for a particular activity. PERFORMING AGENCY shall make a good faith effort to maintain its current level of support. PERFORMING AGENCY may be required to submit documentation substantiating that a reduction in local funding, if any, resulted for reasons other than receipt or expected receipt of funding under the Attachment(s).

RECEIVING AGENCY shall determine whether costs submitted by PERFORMING AGENCY are allowable and reimbursable. If RECEIVING AGENCY has paid funds to PERFORMING AGENCY for unallowable or ineligible costs, PERFORMING AGENCY shall return the funds to RECEIVING AGENCY within thirty (30) days of written notice.

RECEIVING AGENCY may withhold all or part of any payments to PERFORMING AGENCY to offset reimbursement for any ineligible expenditures that PERFORMING AGENCY has not refunded to RECEIVING AGENCY, or if financial status report(s) required under the Reports Article are not submitted by the date(s) due. RECEIVING AGENCY may take repayment from funds available under any Attachment, active or expired, in amounts necessary to fulfill PERFORMING AGENCY repayment obligations.

#### **ARTICLE 18. Advance Payments**

PERFORMING AGENCY may request a one-time advance for each Attachment only to meet immediate need for cash disbursement. PERFORMING AGENCY shall make the request on a State of Texas Purchase Voucher, accompanied by written justification and supporting documentation as specified in RECEIVING AGENCY'S Financial Administrative Procedures Manual. The advance shall be requested at the beginning of the applicable Attachment period or at a later time in the applicable Attachment period if circumstances so warrant. Approval of the request for advance will be at the discretion of RECEIVING AGENCY. If the request is approved, the voucher will be processed; if disapproved, RECEIVING AGENCY will provide written notification to PERFORMING AGENCY.

RECEIVING AGENCY will determine the amount of the advance, if any, by the amount and term of the applicable Attachment(s). For each Attachment, the amount of the advance shall not exceed the amount of the Attachment divided by the number of months covered by the Attachment multiplied by two (2). Advance funds shall be expended during the applicable Attachment term; any unexpended funds must be refunded to RECEIVING AGENCY.

If the Attachment is amended to increase or decrease the total amount of funding, RECEIVING AGENCY may adjust the amount of allowable advance in accordance with the above formula. If PERFORMING AGENCY is requesting an upward adjustment, PERFORMING AGENCY shall submit a written justification and State of Texas Purchase Voucher in the amount necessary to correct the ratio. If the adjustment is downward, RECEIVING AGENCY will determine the amount of adjustment to the advance and the method of repayment.

#### **ARTICLE 19. Program Income**

PERFORMING AGENCY may develop a fee-for-service system and a schedule of fees for personal health services in accordance with the provisions of Health and Safety Code §12.031; the Texas Board of Health rules covering Fees for Clinical Health Services, 25 TAC §1.91; and other applicable laws. No patient may be denied a service due to inability to pay.

All revenues directly generated by an Attachment(s) supported activity or earned only as a result of the Attachment(s) during the term of the Attachment(s) are considered program income. Program income shall be used by PERFORMING AGENCY to further the program objectives of the state/federal statute under which the Attachment(s) was/were made, and it shall be spent on the same project in which it was generated. PERFORMING AGENCY shall identify and report this income utilizing the forms and time frames specified in the Reports Article of these provisions or the Special Provisions of the Attachment.

PERFORMING AGENCY shall utilize one of the following methods for applying program income:

- A. Additive method - add the program income to the funds already committed to the project by both parties.
- B. Deductive method - deduct the program income from the total allowable costs to determine the net allowable costs.

PERFORMING AGENCY shall expend program income during the Attachment term in which it is earned, and may not carry forward to the succeeding term. Program income not expended in the term in which it is earned shall be refunded to RECEIVING AGENCY.

RECEIVING AGENCY may base future funding levels, in part, upon PERFORMING AGENCY'S proficiency in identifying, billing, collecting, and reporting program income, and in utilizing it for the purposes and conditions of the applicable Attachment(s).

#### **ARTICLE 20. Overtime Compensation**

PERFORMING AGENCY shall not use any of the funds provided by the Attachment(s) to pay the premium portion of overtime. PERFORMING AGENCY shall be responsible for any obligations of premium overtime pay due employees. Premium overtime pay is defined as any compensation paid to an individual in addition to the normal rate of pay for hours worked in excess of normal working hours.

#### **ARTICLE 21. Equipment and Supplies**

In accordance with Health and Safety Code §12.053, title to all equipment and supplies purchased with funds from this contract shall be in the name of PERFORMING AGENCY throughout the Attachment(s) term(s) or until the Attachment is terminated.

Equipment is defined as tangible nonexpendable personal property with an acquisition cost of more than ~~\$1,000~~ \$5,000 and a useful life of more than one year, with the following exceptions: fax machines, stereo systems, cameras, video recorder/players, microcomputers, software, printers, microscopes, oscilloscopes, centrifuges, balances, and incubators. If the unit cost of these exception items is more than \$500, they will be considered equipment, shall be approved for purchase by RECEIVING AGENCY, and are considered capital assets for inventory purposes. The acquisition cost is the net invoice unit price of an item of equipment, including the cost of any necessary modifications, attachments, accessories or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Supplies are defined as consumable items necessary to carry out the Attachment including medical supplies, drugs, janitorial supplies, office supplies, patient educational supplies, software, and any items of tangible personal property other than those defined as equipment above.

All items of equipment purchased with Attachment funds shall be itemized in the budget. Any changes to the equipment list contained in the budget shall be approved in writing by RECEIVING AGENCY. PERFORMING AGENCY shall submit a written description including complete product specifications and need justification prior to purchasing any item of unapproved equipment. If approved, RECEIVING AGENCY will notify PERFORMING AGENCY by means of a written amendment or Attachment Change Notice.

~~PERFORMING AGENCY shall maintain a nonexpendable personal property (equipment) inventory and submit an annual cumulative report (TDH Form GC-11) to RECEIVING AGENCY no later than October 15th of each year. PERFORMING AGENCY shall administer a program of maintenance, repair, and protection of assets under this contract so as to assure their full availability and usefulness. In the event PERFORMING AGENCY is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided under this~~



~~contract, it shall use the proceeds to repair or replace said assets. If any item of equipment is no longer needed to perform services under the Attachment(s) or becomes inoperable, PERFORMING AGENCY shall request disposition instructions in writing from RECEIVING AGENCY.~~

PERFORMING AGENCY shall maintain a nonexpendable personal property (equipment) inventory and submit an annual cumulative report (TDH Form GC-11) to RECEIVING AGENCY no later than October 15th of each year. PERFORMING AGENCY shall administer a program of maintenance, repair, and protection of assets under this contract so as to assure their full availability and usefulness. In the event PERFORMING AGENCY is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided under this contract, it shall use the proceeds to repair or replace said assets. If any item of equipment is no longer needed to perform services under the Attachment(s) or becomes inoperable, PERFORMING AGENCY shall request disposition instructions in writing from RECEIVING AGENCY.

In the event of bankruptcy, PERFORMING AGENCY shall sever RECEIVING AGENCY property, equipment, and supplies in possession of PERFORMING AGENCY from the bankruptcy, and title shall revert to RECEIVING AGENCY.

Upon termination or expiration of applicable Attachment(s) that are not renewed, title to any remaining equipment and supplies purchased from funds under this contract reverts to RECEIVING AGENCY. Title may be transferred to any other party designated by RECEIVING AGENCY. RECEIVING AGENCY may, at its option and to the extent allowed by law, transfer the reversionary interest to such property to PERFORMING AGENCY.

## **ARTICLE 22. Contracts with Subrecipients**

PERFORMING AGENCY may enter into contracts with subrecipients unless restricted or otherwise prohibited in specific Attachment(s). Prior to entering into an agreement equaling \$25,000 or twenty-five percent (25%) of an Attachment, whichever is greater, PERFORMING AGENCY shall obtain written approval from RECEIVING AGENCY.

Contracts with subrecipients shall be in writing and include the following:

- Name and address of all parties;
- A detailed description of the services to be provided;
- Measurable method and rate of payment and total amount of the contract;
- Clearly defined and executable termination clause;
- Beginning and ending dates which coincide with the dates of the applicable Attachment(s) or cover a term within the beginning and ending dates of the applicable Attachment(s);
- Records retention requirements consistent with UGMS;
- Access to inspect the work and the premises on which any of the work is performed, in accordance with the Inspections Article contained in this contract;
- All clauses required by state/federal statutes, executive orders, and their implementing regulations; and
- Where applicable, federal statutes and regulations, including federal grant requirements applicable to funding sources, Uniform Grant Management Standards issued by the Governor's Office, applicable Office of Management and Budget Circulars, and applicable Code of Federal Regulations.

PERFORMING AGENCY agrees that all contracts with other subrecipients containing a categorical budget shall include audit requirements referenced in the Allowable Costs and Audit Requirements Article of this contract, as appropriate.

PERFORMING AGENCY is responsible to RECEIVING AGENCY for the performance of any subrecipient. PERFORMING AGENCY shall monitor both financial and programmatic performance and maintain pertinent records that shall be available for inspection by RECEIVING AGENCY.

PERFORMING AGENCY shall ensure that:

- Subrecipients are fully aware of the requirements imposed upon them by state/federal statutes and regulations including prompt payment of any subcontractors pursuant to Texas Government Code, Chapter 2251, Subchapter D;
- Subrecipients comply with all financial management requirements as defined by RECEIVING AGENCY, UGMS and the applicable OMB circulars;
- Subrecipients complete required audits;
- An adequate tracking system is maintained to ensure timely receipt of any subrecipient's required audit reports and the resolution of any findings and questioned costs cited by these reports; and, that
- RECEIVING AGENCY is immediately notified in writing of alleged or actual misuse or misappropriation of contract funds by subrecipients.

### **ARTICLE 23. Contracts for Procurement**

PERFORMING AGENCY may enter into contracts for procurement of goods and services unless restricted or otherwise prohibited in specific Attachment(s). PERFORMING AGENCY agrees that it shall be responsible to RECEIVING AGENCY for the performance of any subcontracted activity.

Contracts for procurement of goods and services shall be in writing and contain the following provisions:

- Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (contracts other than small purchases).
- Remedies for prompt payment of any subcontractor pursuant to Texas Government Code, Chapter 2251, Subchapter D.
- Termination for cause and for convenience by PERFORMING AGENCY including the manner by which it will be effected and the basis for settlement (all contracts in excess of \$10,000).
- Compliance with the Copeland "Anti-Kickback" Act (18 USC §874) as supplemented in Department of Labor regulations (29 CFR Part 3) (all contracts and subgrants for construction or repair).
- Compliance with §§103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC §§327-330) as supplemented by Department of Labor regulations (29 CFR Part 5) (construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).
- Notice of RECEIVING AGENCY requirements and regulations pertaining to reporting.
- Notice of RECEIVING AGENCY requirements and regulations pertaining to trademarks, service marks, copyrights, and patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- RECEIVING AGENCY requirements and regulations pertaining to copyrights and rights in data.
- Access by RECEIVING AGENCY, the federal grantor agency, the Comptroller General of the United States, the State of Texas or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- Retention of all required records for the required retention period after RECEIVING AGENCY makes final payments and all other pending matters are closed.
- Compliance with all applicable standards, orders, or requirements issued under §306 of the Clean Air Act (42 USC §7401), §508 of the Clean Water Act (33 USC §1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

- Mandatory standards and policies relating to efficiency which are contained in the state energy plan issued in compliance with the Energy Policy and Conservation Act (P. L. 94-163), 42 USC §§6201, *et seq.*, as amended.

## **ARTICLE 24. Reports**

Financial reports are required as provided in UGMS, and PERFORMING AGENCY shall file them regardless of whether expenses are incurred.

For each Attachment, PERFORMING AGENCY shall submit a Financial Status Report, State of Texas Supplemental Form 269A (TDH Form GC-4a) within thirty (30) days following the end of each of the first three (3) quarters. PERFORMING AGENCY shall submit a final financial report on State of Texas Supplemental Form 269A (TDH Form GC-4a), not later than ninety (90) days following the end of the Attachment term(s). PERFORMING AGENCY shall submit a State of Texas Purchase Voucher (TDH Form B-13), or any other form designated by RECEIVING AGENCY, with the final financial report if all costs have not been recovered, or PERFORMING AGENCY shall refund excess monies if costs incurred were less than funds received.

~~PERFORMING AGENCY shall submit program and progress reports required by RECEIVING AGENCY in the format agreed to by the parties. PERFORMING AGENCY shall provide RECEIVING AGENCY other reports including financial reports RECEIVING AGENCY determines necessary to accomplish the objectives of this contract and to monitor compliance. If PERFORMING AGENCY is legally prohibited from providing such reports, it shall immediately notify RECEIVING AGENCY.~~

PERFORMING AGENCY shall submit program and progress reports required by RECEIVING AGENCY in the format agreed to by the parties. PERFORMING AGENCY shall provide RECEIVING AGENCY and/or HHSC other reports including financial reports determined necessary to accomplish the objectives of this contract and to monitor compliance. If PERFORMING AGENCY is legally prohibited from providing such reports, it shall immediately notify RECEIVING AGENCY and/or HHSC.

## **ARTICLE 25. Inspections**

RECEIVING AGENCY, Health and Human Services Commission (HHSC), and, when federal funds are involved, any authorized representative(s) of the federal government have the right, at all reasonable times, to inspect or otherwise evaluate the work (including reviews of client or patient records and discussions with staff) performed by PERFORMING AGENCY and its subrecipient(s), if any, and the premises on which the work is being performed. PERFORMING AGENCY and its subrecipient(s) shall participate in inspections and provide reasonable access, facilities, and assistance to the representatives. All inspections and evaluations will be conducted in such a manner as will not unduly interfere with the work.

PERFORMING AGENCY (and any parent, affiliate or subsidiary organization, if such a relationship exists) and its subrecipient(s), if any, shall give RECEIVING AGENCY, HHSC, the federal government, and the Texas State Auditor, or any of their duly authorized representatives, access to any pertinent books, documents, papers, and client or patient records, if any, for the purpose of making audit, examination, excerpts, and transcripts of transactions related to this contract. RECEIVING AGENCY and HHSC will have the right to audit billings both before and after payment. Payments will not foreclose the right of RECEIVING AGENCY and HHSC to recover excessive or illegal payments.

~~Any deficiencies identified by RECEIVING AGENCY upon examination of PERFORMING AGENCY'S records will be conveyed in writing to PERFORMING AGENCY. PERFORMING AGENCY'S resolution of findings will also be conveyed in writing to RECEIVING AGENCY within thirty (30) days of receipt of RECEIVING AGENCY'S findings. A RECEIVING AGENCY determination of either an inadequate or inappropriate resolution of the findings may result in sanctions which will remain in effect until RECEIVING AGENCY determines the deficiencies are properly remedied.~~

Any deficiencies identified by RECEIVING AGENCY and/or HHSC upon examination of PERFORMING AGENCY'S records will be conveyed in writing to PERFORMING AGENCY. PERFORMING AGENCY'S resolution of findings will be conveyed in writing within thirty (30) days of receipt of the report of the deficiencies. PERFORMING AGENCY'S resolution of findings will be sent to the agency(ies) referenced in the cover letter of the report. A RECEIVING AGENCY and/or HHSC determination of either an inadequate or inappropriate resolution of the findings may result in sanctions which will remain in effect until RECEIVING AGENCY and HHSC determines the deficiencies are properly remedied.

## **ARTICLE 26. Records Retention**

PERFORMING AGENCY and its subrecipients and subcontractors shall retain medical records in accordance with 22 Texas Administrative Code (TAC), Part 9, §165.1(b)(c) or other applicable statutes and regulations governing medical information. PERFORMING AGENCY shall retain and preserve all other records, including financial records, which are generated or collected by PERFORMING AGENCY or its subrecipients or subcontractors under the provisions of this contract, for a period of four (4) years after the termination of the Attachment(s). If an Attachment is funded through Medicaid, the federal retention period, if more than four (4) years shall apply. PERFORMING AGENCY and its subrecipients shall retain all records for an Attachment that is the subject of litigation or an audit until the litigation is ended or all questions pertaining to the audit are resolved.

Legal requirements for PERFORMING AGENCY may extend beyond the retention schedules established herein.

## **ARTICLE 27. Confidentiality of Protected Health Information**

PERFORMING AGENCY is required to comply with state and federal laws relating to the privacy and confidentiality of patient and client records that contain protected health information, or other information made confidential by law.

PERFORMING AGENCY is required to disclose protected health information of patients or clients provided services funded through this contract to RECEIVING AGENCY upon request, or as otherwise required in other contract provisions.

RECEIVING AGENCY is authorized to request, collect and receive protected health information under this contract, without the consent of the individual to whom the protected health information relates, for funding, payment and administration of the grant program.

RECEIVING AGENCY is also authorized to request, collect and receive protected health information under this contract, without the consent of the individual to whom the protected health information relates, under exceptions to state confidentiality laws and federal privacy laws, including the Health Insurance Portability and Accountability Act (HIPAA) and the Privacy Standards adopted to implement HIPAA at 45 CFR Parts 160 and 164, at §164.512, and Occupations Code, Chapter 159, at §§159.003 and 159.004.

PERFORMING AGENCY must maintain patient and client records in compliance with state laws relating to the security and retention of medical or patient records. RECEIVING AGENCY may require PERFORMING AGENCY to transfer original or copies of patient and client records to another entity, without the consent or authorization of the patient or client, upon termination of this contract, or if the care and treatment of the individual patient or client is transferred to another entity.

If providing direct client care, services, or programs, PERFORMING AGENCY shall implement RECEIVING AGENCY'S policies based on the model HIV/AIDS (human immunodeficiency virus/acquired immunodeficiency syndrome) workplace guidelines, and PERFORMING AGENCY shall educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Health and Safety Code, §85.112-114.

## ARTICLE 28. Hold Harmless

PERFORMING AGENCY, as an independent contractor, agrees to hold RECEIVING AGENCY and/or the federal government harmless and to indemnify them from any and all liability, suits, claims, losses, damages and judgments, and to pay all costs, fees, and damages to the extent that such costs, fees, and damages arise from performance or nonperformance of PERFORMING AGENCY under this contract.

## ARTICLE 29. Sanctions

~~RECEIVING AGENCY may impose sanctions for any breach of this contract and will monitor PERFORMING AGENCY for both programmatic and financial compliance. RECEIVING AGENCY may, at its own discretion, impose one or more sanctions for each item of noncompliance and will determine sanctions on a case-by-case basis. A state or federal statute, rule, regulation, or federal guideline will prevail over the provisions of this Article unless the statute, rule, regulation, or guideline can be read together with the provision(s) of this Article to give effect to both.~~

RECEIVING AGENCY may impose sanctions for any breach of this contract and will monitor PERFORMING AGENCY for both programmatic and financial compliance. HHSC may impose or recommend imposition of sanctions to RECEIVING AGENCY for any breach of this contract and will monitor PERFORMING AGENCY for financial compliance. RECEIVING AGENCY may, at its own discretion, impose one or more sanctions for each item of noncompliance and will determine sanctions on a case-by-case basis. A state or federal statute, rule, regulation, or federal guideline will prevail over the provisions of this Article unless the statute, rule, regulation, or guideline can be read together with the provision(s) of this Article to give effect to both.

RECEIVING AGENCY may:

- A. Terminate all or a part of this contract. See the Termination Article in these provisions.
- B. Suspend all or part of this contract. Suspension is, depending on the context, either (1) the temporary withdrawal of PERFORMING AGENCY'S authority to obligate funds pending corrective action by PERFORMING AGENCY or its subrecipient(s) or pending a decision to terminate or amend the contract, or (2) an action taken by a suspending official in accordance with agency regulations implementing Executive Order 12549 to immediately exclude a person from participating in contract transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue. PERFORMING AGENCY costs resulting from obligations incurred by PERFORMING AGENCY during a suspension are not allowable unless expressly authorized by the notice of suspension.
- C. Disallow (deny both use of funds and matching credit for) all or part of the activities or action not in compliance.
- D. Temporarily withhold cash payments. Temporarily withholding cash payments means the temporary withholding of advances or reimbursements to PERFORMING AGENCY or its subrecipient(s) for proper charges or obligations incurred, pending resolution of issues of noncompliance with contract conditions or indebtedness to the United States or to the State of Texas.
- E. Permanently withhold cash payments. Permanent withholding of cash payment means that RECEIVING AGENCY retains funds billed by PERFORMING AGENCY or its subrecipient(s) for a) unallowable, undocumented, disputed, inaccurate, improper, or erroneous billings; b) failure to comply with contract provisions; or c) indebtedness to the United States or to the State of Texas.
- F. Deny contract renewal or future contract awards to a PERFORMING AGENCY.



- G. Delay contract execution with PERFORMING AGENCY while other imposed or proposed sanctions are pending resolution.
- H. Place PERFORMING AGENCY on probation. Probation means that PERFORMING AGENCY will be placed on accelerated monitoring for a period not to exceed six (6) months at which time items of noncompliance shall be resolved or substantial improvement shown by PERFORMING AGENCY.
- I. Conduct accelerated monitoring of PERFORMING AGENCY. Accelerated monitoring means more frequent or more extensive monitoring will be performed by RECEIVING AGENCY than would routinely be accomplished.
- J. Require PERFORMING AGENCY to obtain technical or managerial assistance.
- K. Disallow requests for reimbursement by disapproving costs or fees submitted for payment or reimbursement by PERFORMING AGENCY.
- L. Establish additional prior approvals for expenditure of funds by PERFORMING AGENCY.
- M. Require additional, more detailed, financial and/or programmatic reports to be submitted by PERFORMING AGENCY.
- N. Demand repayment from PERFORMING AGENCY.
- O. Reduce the funding amount for failure to achieve or maintain the proposed level of service, to expend funds appropriately and at a rate which will make full use of the award, or to provide services as set out in the Attachment(s).
- P. Impose other remedies provided by law.

RECEIVING AGENCY will formally notify PERFORMING AGENCY in writing when a sanction is imposed (with the exception of accelerated monitoring, which may be unannounced), stating the nature of the sanction(s), the reasons for imposing them, the corrective actions which shall be taken before they will be removed and the time allowed for completing the corrective actions, and the method, if any, of requesting reconsideration of the sanctions imposed. PERFORMING AGENCY is required to file, within fifteen (15) days of receipt of notice, a written response to RECEIVING AGENCY'S program/division that sent the notice, acknowledging receipt of such notice and stating how PERFORMING AGENCY shall correct the noncompliance or demonstrating in writing that the findings on which the sanctions are based are either invalid or do not warrant the sanction(s). If RECEIVING AGENCY determines that a sanction is warranted, and unless the sanction is subject to review (see Sanction Review Article), RECEIVING AGENCY'S decision is final and PERFORMING AGENCY shall take corrective action.

In an emergency, RECEIVING AGENCY may immediately terminate or suspend all or part of this contract, temporarily or permanently withhold cash payments, deny contract renewal or future contract awards, or delay contract execution by delivering written notice to PERFORMING AGENCY, by any verifiable method, stating the reason for the emergency action.

An "emergency" is defined as the following:

- PERFORMING AGENCY is noncompliant and the noncompliance has a direct adverse impact on the public or client health or safety. The direct adverse impact may be programmatic or financial, impacting health or safety by failing to provide services, providing inadequate services, providing unnecessary services, or utilizing resources so that the public or clients do not receive the benefits contemplated by the scope of work or performance measures;

- PERFORMING AGENCY fails to achieve a performance measure;
- PERFORMING AGENCY is reimbursed or requesting reimbursement for expenditures which are not in accordance with applicable federal or state laws and regulations or the provisions of this contract; or
- PERFORMING AGENCY is expending funds inappropriately.

Whether PERFORMING AGENCY'S conduct or inaction is an emergency will be determined by RECEIVING AGENCY on a case-by-case basis and will be based upon the egregious nature of the noncompliance or conduct.

### **ARTICLE 30. Sanction Review**

PERFORMING AGENCY may request a review of the imposition of the following sanctions: termination of all or part of this contract, suspension of all or part of this contract, permanent withholding of cash payments, reduction of funding or other amendment resulting from noncompliance, and denial of contract renewal or future contract awards.

PERFORMING AGENCY shall make the request for review in writing to RECEIVING AGENCY within fifteen (15) days from the date of notification by providing written notice of the dispute to the person who signed the notification.

PERFORMING AGENCY'S notice shall contain the following: (1) a copy of the letter from RECEIVING AGENCY notifying PERFORMING AGENCY of the sanction; (2) a specific description of each act that is the basis for the dispute; (3) the grounds upon which PERFORMING AGENCY bases the complaint; (4) an identification of the issue or issues to be resolved; (5) a precise statement of the relevant facts; (6) any documentation in support of PERFORMING AGENCY'S position; and (7) a statement and authorities in support of PERFORMING AGENCY'S position.

Evidence that PERFORMING AGENCY properly notified RECEIVING AGENCY consists of any of the following documents: (1) signature on delivery card; (2) confirmation of a facsimile to the correct telephone number; or (3) signed acknowledgment of delivery.

RECEIVING AGENCY'S representative will schedule a meeting or a conference call to attempt to resolve the issues in dispute. If the dispute is resolved, any resolution will be in writing and will be signed by all parties. If the dispute is not resolved, RECEIVING AGENCY'S representative will notify PERFORMING AGENCY in writing. RECEIVING AGENCY will appoint a reviewer(s), who will review the information, who may permit or require additional information and who may grant, deny, or modify all relief requested in the written notice of dispute. The reviewer(s)'s decision will be in writing and will contain a discussion of the reason for the decision and the remedial action, if any. The reviewer(s) will send copies of the decision to all parties by any verifiable means. The decision of the reviewer(s) is final and is the final action of RECEIVING AGENCY for purposes of further proceedings.

A state statute or rule or a federal statute, regulation or guideline will prevail over the provisions of this Article unless the statute, rule, regulation or guideline can be read together with the provision or provisions of this Article to give effect to both.

### **ARTICLE 31. Breach of Contract Claim**

The process for a breach of contract claim provided for in Chapter 2260 of Texas Government Code and implemented in the rules at 25 TAC §§1.431-1.447 shall be used by RECEIVING AGENCY and PERFORMING AGENCY to attempt to resolve any claim for breach of contract made by PERFORMING AGENCY.

- A. PERFORMING AGENCY'S claims for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, Texas Government Code. To initiate the process, PERFORMING AGENCY shall submit written notice, as required by subchapter B, to RECEIVING AGENCY'S Office of General Counsel.



Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of RECEIVING AGENCY and PERFORMING AGENCY otherwise entitled to notice under this contract. Compliance by PERFORMING AGENCY with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, Texas Government Code.

- B. The contested case process provided in Chapter 2260, subchapter C, Texas Government Code, is PERFORMING AGENCY'S sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by RECEIVING AGENCY if the parties are unable to resolve their disputes under subparagraph A. of this paragraph.
- C. Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by RECEIVING AGENCY nor any other conduct of any representative of RECEIVING AGENCY relating to this contract shall be considered a waiver of sovereign immunity to suit.

Neither the occurrence of an event nor the pendency of a claim constitute grounds for the suspension of performance by PERFORMING AGENCY, in whole or in part.

#### **ARTICLE 32. Termination**

Each Attachment shall terminate upon its expiration date unless extended by written amendment in accordance with the Amendments Article. Prior to completion of the Attachment term, all or a part of this contract may be terminated with or without cause as set out below.

- A. Termination is the permanent withdrawal of PERFORMING AGENCY'S authority to obligate previously awarded funds before that authority would otherwise expire or the voluntary relinquishment by PERFORMING AGENCY of the authority to obligate previously awarded funds. PERFORMING AGENCY costs resulting from obligations incurred by PERFORMING AGENCY after termination of an award are not allowable unless expressly authorized by the notice of termination. Termination does not include: (1) withdrawal of funds awarded on the basis of the PERFORMING AGENCY'S underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance as of the expiration of an Attachment; (3) refusal to extend an Attachment or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a contract upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.
- B. Termination without cause.
  - (1) Either party may terminate this contract with at least ninety (90) days prior written notice to the other party.
  - (2) The parties may terminate this contract by mutual agreement.
  - (3) Either party may terminate this contract with at least thirty (30) days prior written notice to the other party in the event state and/or federal funding for this contract is terminated, limited, suspended, withdrawn, or discontinued.
  - (4) RECEIVING AGENCY may terminate this contract when, in the sole determination of RECEIVING AGENCY, termination is in the best interest of the State of Texas.
- C. Termination for cause.
  - (1) Either party may terminate for material breach of this contract with at least thirty (30) days written notice to the other party.

- (2) RECEIVING AGENCY may terminate this contract, in whole or in part, for breach of contract or for any other conduct that jeopardizes the contract objectives, by giving at least thirty (30) days written notice to PERFORMING AGENCY. Such conduct may include one or more of the following:
- (a) A court of competent jurisdiction finds that PERFORMING AGENCY has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;
  - (b) PERFORMING AGENCY fails to communicate with RECEIVING AGENCY or fails to allow its employees or those of its subrecipients to communicate with RECEIVING AGENCY as necessary to the performance of this contract;
  - (c) PERFORMING AGENCY breaches a standard of confidentiality with respect to the services provided under this contract;
  - (d) RECEIVING AGENCY determines that PERFORMING AGENCY is without the personnel or resources to perform under this contract;
  - (e) RECEIVING AGENCY determines that PERFORMING AGENCY, its agent or another representative offered or gave a gratuity (e.g., an entertainment or gift) to an official or employee of RECEIVING AGENCY for the purpose of obtaining a contract or favorable treatment;
  - (f) PERFORMING AGENCY'S management system does not meet the UGMS management standards; or
  - (g) PERFORMING AGENCY appears to be financially unstable. Indicators of financial instability may include one or more of the following:
    - (i) PERFORMING AGENCY fails to make payments;
    - (ii) PERFORMING AGENCY makes an assignment for the benefit of its creditors;
    - (iii) PERFORMING AGENCY admits in writing its inability to pay its debts generally as they become due;
    - (iv) If judgment for the payment of money in excess of \$50,000 (which is not covered by insurance) is rendered by any court or governmental body against PERFORMING AGENCY, and PERFORMING AGENCY does not (a) discharge the judgment or (b) provide for its discharge in accordance with its terms, or (c) procure a stay of execution within thirty (30) days from the date of entry thereof, and within the thirty (30)-day period or a longer period during which execution of the judgment shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal while providing such reserves therefore as may be required under generally accepted accounting principles;
    - (v) A writ or warrant of attachment or any similar process shall be issued by any court against all or any material portion of the property of PERFORMING AGENCY, and such writ or warrant of attachment or any similar process is not released or bonded within thirty (30) days after its entry;
    - (vi) PERFORMING AGENCY is adjudicated bankrupt or insolvent;
    - (vii) PERFORMING AGENCY files a case under the Federal Bankruptcy Code or is seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any case or petition against it under any such law;
    - (viii) Any property or portion of the property of PERFORMING AGENCY is sequestered by court order and the order remains in effect for more than thirty (30) days after PERFORMING AGENCY obtains knowledge thereof;
    - (ix) A petition is filed against PERFORMING AGENCY under any state reorganization, arrangement, insolvency, readjustment of debt, dissolution,

- liquidation, or receivership law of any jurisdiction, whether now or hereafter in effect, and such petition is not dismissed within thirty (30) days; or
- (x) PERFORMING AGENCY consents to the appointment of a receiver, trustee, or liquidator of PERFORMING AGENCY or of all or any part of its property.

- D. Emergency termination. In emergency circumstances, RECEIVING AGENCY may terminate this contract immediately upon notice to PERFORMING AGENCY by any verifiable means. "Emergency" is defined in the Sanctions Article.

Either party may deliver written notice of intent to terminate by any verifiable method. If either party gives notice of its intent to terminate all or a part of this contract, RECEIVING AGENCY and PERFORMING AGENCY will attempt to resolve any issues related to the anticipated termination in good faith during the notice period. Upon termination of all or part of this contract, RECEIVING AGENCY and PERFORMING AGENCY will be discharged from any further obligation created under the applicable terms of this contract except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination. Termination does not, however, constitute a waiver of any remedies for breach of this contract. In addition, the obligations of PERFORMING AGENCY to retain records and maintain confidentiality of information shall survive this contract.

#### **ARTICLE 33. Void Contract**

RECEIVING AGENCY may hold this contract void upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

#### **ARTICLE 34. Severability**

If any provision of this contract is construed to be illegal or invalid, the illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated, but all other provisions will continue.

#### **ARTICLE 35. Survival of Terms**

Termination or expiration of this contract for any reason shall not release either party from any liabilities or obligations set forth in this contract that (a) the parties have expressly agreed shall survive any such termination or expiration, or (b) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

#### **ARTICLE 36. Construction of Ambiguities**

The parties expressly agree that they have each independently read and understood this contract. Any ambiguities in this contract shall not be construed against the drafters.

#### **ARTICLE 37. No Waiver of Sovereign Immunity**

**THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY RECEIVING AGENCY OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT RECEIVING AGENCY OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.**